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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,606	08/15/2000	Sean P. Burns	GIO-007-US	1629

7590 04/15/2004

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EXAMINER

MILLER, EDWARD A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/638,606

Examiner

Edward A. Miller

Applicant(s)

BURNS ET AL.

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 27 August 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See next page.

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Art Unit: 3641

1. This application is abandoned in view of applicant's failure to submit a reply to the Office Action mailed on August 27, 2003, within the required period for reply.
2. This situation is unusual. The Office re-mailed Paper No. 10 on August 27, 2003, which is subsequent to the date of applicants' amendment, which was filed August 25, 2003. This amendment states that it was responsive to Paper No. 10, the Office action mailed April 21, 2003. Actually, Paper No. 10 was originally mailed January 02, 2003, then re-mailed February 24, 2003, then re-mailed again on April 21, 2003, and finally re-mailed on August 27, 2003.


Subsequent to the re-mailing of Paper No. 10 on August 27, 2003, the Office clerical staff further sent out a Notice of non-Compliant amendment on October 14, 2003, which stated that the amendment of August 25, 2003 was improper since it did not contain a complete listing of all claims.

3. Thus, at that time, October 14, 2003, there were two time periods running, one for the reply to re-mailed Paper No. 10, which started August 27, 2004, and a second time period for the nonresponsive amendment filed August 25, 2003. Nothing in the Notice of Non-Compliant Amendment October 14, 2003, referred to or modified Paper No. 10, re-mailed on August 27. Specifically, it neither restarted the period for response of Paper No. 10, re-mailed August 27, nor waived that statutory time for reply. Manifestly, a reply to an earlier Office action is not a reply to an office action re-mailed subsequent to the received date thereof. The statutory time for reply to Paper No. 10, re-mailed August 27, 2003 having expired, this application is abandoned.

4. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em
April 12, 2004


EDWARD A. MILLER
PRIMARY EXAMINER